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NO. 01-1572

IN THE

Supreme Court of the United States

COOK COUNTY, ILLINOIS,

Petitioner,

v.

UNITED STATES ex rel. JANET CHANDLER, Ph.D.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR COUNTY OF DELAWARE, PENNYSLVANIA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE COUNTY OF DELAWARE PENNSYLVANIA

The issue before this Honorable Court is whether local governmental entities are immune from liability under the False Claims Act, 31 U.S.C. § 3729 *et seq.* (the "Act"), since the Act is punitive. The same issue was seminal in *United States ex rel. Dunleavy v. County of Delaware*, 279 F.3d 219 (3rd Cir. 2002) ("Dunleavy 2"), in which the Third Circuit ruled that local governments are immune from damages under the Act. Relator in that matter has petitioned this Honorable Court for a writ of certiorari to the Third Circuit based upon that decision, which petition remains pending. Even absent the propinquity because of the *Dunleavy* matter, however, the County of Delaware (the "County") would nonetheless have a significant interest in the matter *sub judice*, as it is a local government entity that receives funds from the federal government under various federal programs and, as such, periodically issues requests for payment and makes reports to federal government agencies that may constitute claims as defined by the Act.

SUMMARY OF ARGUMENT

The County respectfully submits this brief in support of Cook County's argument that because the Act is punitive, local government entities are immune from liability thereunder, as it contains no clear expression of Congressional intent to impose liability thereupon.

a. As demonstrated in the *Dunleavy* case, a relator may maintain a case under the Act in which the federal government declines to intervene, but then resolves the underlying issue with the defendant. Thus, in spite of the fact that the federal government has resolved to its satisfaction the issue giving rise to the alleged false claim by accepting from the grantee what the government considers to be payment in full, the relator may continue to prosecute the action. This is particularly punitive in light of rulings that when determining damages under the Act, the amount of the alleged claim is trebled before any credit is assessed for amounts paid as the result of such a settlement. Since the government is compensated for any harm resulting from the alleged false claim by way of the settlement, any additional damages against the alleged claimant are punitive in nature.

b. Application of the False Claims Act against local governmental agencies is not necessary to protect the federal government from alleged fraud by local governmental entities. Rather, there are many alternative means by which the federal government can protect the public treasury from fraud by local governments that do not include the *in terrorem* threat of punitive damages, including but not limited to, a panoply of common law remedies, audits of grantees under various regulatory previous, and independent audits required under the Single Audit Act (the "Audit Act"). Regulatory audit provisions are generally coupled with a wide array of remedies and sanctions. There has been no showing that fraud by local governments is rampant or that the alternative means for

discovering and remedying any fraud that occurs are ineffective. As alternative means exist which permit discovery and recovery of fraudulently usurped federal funds, the Act, which permits damages up to three times that amount, plus a civil money penalty, is punitive.

ARGUMENT

I. THE FALSE CLAIMS ACT PROVIDES FOR PUNITIVE DAMAGES

There can be no doubt that the treble damages imposed by the Act are punitive. This Court already has so held. *See Vermont Agency of Natural Resources v. United States ex rel.* Stevens, 529 U.S. 765, 784-785 (2000). The holding in *Stevens* was consistent with prior decisions of this Court addressing treble damage provisions. *See, e.g., Texas Industries, Inc. v, Radcliffe Materials, Inc.*, 451 U.S. 630, 639 (1981) (holding that treble damage provision of Clayton Act is punitive). Delaware County's experience demonstrates vividly the punitive nature of the Act.

Under the False Claims Act, "any person who . . . knowingly makes, uses or causes to be made or used, a false record or statement to get a false or fraudulent claim or approved by the Government . . . is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, *plus three times the amount of* damages which the Government sustains because of the act of that person . . . ." 31 U.S.C. § 3729(a) (emphasis added). In *Dunleavy*, the federal government and Delaware County came to a negotiated resolution, allowing the government to get a full recovery of the amount the County errantly usurped. Nonetheless, the Third Circuit ruled that Dunleavy could proceed with his false claims action against the County.

Dunleavy attempted to state a cause of action under the Act in connection with the County's peripheral involvement in the Pennsylvania Department of Transportation's

("PennDOT's") construction of Route 476 around the western perimeter of Philadelphia. In the late 1970's, the County acquired, via condemnation, a 56.6 acre tract of land adjacent to Smedley Park in Nether Providence Township, Pennsylvania (the "Penza Tract"). *U.S. ex rel. Dunleavy v. County of Delaware*, 123 F.3d 734, 736 (3rd Cir. 1997) ("Dunleavy 1"). To acquire the Penza Tract, the County appropriated approximately $1,839,500 in funds it had received under the Community Development Block Grant ("CDBG") program from the United States Department of Housing and Urban Development ("HUD"), and approximately $685,000 of its own funds. *Id.*

The County originally planned to use the Penza Tract to expand Smedley Park. However, on January 26, 1979, it sold 26.3 acres of the Tract to PennDOT for $1,988,550, for the construction of Route 476. *Id.* The County later sold an additional 1.9 acre portion of the Penza Tract to PennDOT for $103,950. *Id.* Because the County retained certain rights to repurchase the properties if the construction of Route 476 was prevented by pending litigation or community opposition, the proceeds of both sales were held by the County in a segregated account. *Id.* In 1988, the County transferred a final portion of the Penza Tract to PennDOT for $1,000,000. *Id.* The litigation blocking construction was resolved and Route 476 was then constructed, opening in 1991. *Id.*

Dunleavy, who was the County's consultant for HUD grant programs during the years in question, (but whose contract was terminated by the County in 1992), filed suit under the Act on November 18, 1994. Dunleavy alleged that the County failed to report the proceeds from sales of the portions of the Penza Tract to HUD as program income, and to use the proceeds for CDBG purposes allegedly as required by the contractual agreement and grant program through which the funds were acquired from HUD. *Id.* at 137.

HUD made an independent investigation of the Penza Tract Fund in 1996. *Id.* As a result, it demanded repayment of approximately $1,900,000 by the County. *Id.* After

negotiation, and over Dunleavy's protest, HUD settled the matter with the County for $1,921,699. *Id.* HUD then returned the money to the County's line-of-credit, making it available for eligible uses. *Id.*

In spite of the settlement between the County and HUD, and although it was not an issue raised on appeal by the parties, the Third Circuit held that the relator could proceed with his False Claims action against the County. *Id.* at 739. After discussing whether the federal government intended its settlement with the County to satisfy the underlying claim or to address an entirely separate transgression, the Third Circuit went on to state as follows:

> we need not decide whether the settlement terminated the government's rights against Delaware County under the Act, because Dunleavy's right to proceed with his *qui tam* action remains unimpaired. Subsection (c)(5) preserves a relator's right to a percentage of the recovery even when the government chooses to pursue its claim administratively. Because the government never exercised its rights to intervene, the settlement between HUD and Delaware County does not negate Dunleavy's ability, as the relator, to proceed independently with his *qui tam* action.

Id.[1] Thus, in spite of the federal government's recovery of its loss, and its satisfaction with that recovery, the Third Circuit's decision allows the relator to continue to prosecute his action under the Act, and to obtain damages as provided therein.

The method in which damages are calculated in the face of a credit there against being due to the defendant emphasizes the punitive nature of the Act. The issue of how to apply credits against false claims damages was addressed by the Court in *U.S. v. Bornstein*, 423 U.S. 303 (1976). In that case, a subcontractor shipped falsely labeled electron tubes to the prime contractor that did not meet the specifications for the project in question. *Id.* at 307. The prime contractor then incorporated the tubes into radios produced for the federal government, and requested payment as though it employed the proper tubes. *See Id.*

After the fraud was discovered, the federal government recovered a portion of the costs of the radios from the prime contractor. *Id.* The government then brought suit under the Act against the subcontractor. *Id.* at 308. One issue in that suit was whether the credit against the government's damages resulting from its recovery from the prime

1. "Subsection (c)(5)" refers to 31 U.S.C. 3730(c)(5), which reads as follows:

> [N]otwithstanding subsection (b), the Government may elect to pursue its claim through any alternative remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

contractor should be applied before or after the damages were doubled.[2] The Court concluded that the purpose of the Act was best served if the damages were doubled before the credit was applied for several reasons. *Id.* at 311-12. First, double damages were necessary to completely compensate the Government for the costs, delays and inconvenience caused by the fraudulent claims. *Id.* at 312. That statement rang particularly true under the version of the Act then in existence, as the relator was at that time entitled to up to fifty percent (50%) of the recovery; now, with treble damages, and the Relator entitled to no more than thirty percent (30%) of the proceeds, that rationale no longer applies. Second, the Court feared that fixing damages against a defendant based upon the actions of a third party would cause disparate results across cases. *Id.* For example, one subcontractor should not be entitled to a windfall as compared to another simply because the first prime contractor was willing to compensate the government for its loss and the second prime contractor was not. *Id.* Finally, the Court did not want to provide a defendant with a way to avoid double damages by simply tendering the amount of actual damage before judgment. *Id.*

Courts have applied *Bornstein* mechanically, in spite of the increase in the False Claims multiplier as a result of the 1986 amendment to the Act. *See e.g., U.S. v. Cabrera-Diaz*, 106 F. Supp. 2d 234, 241 (D.P.R. 2000); *BMY-Combat Sys. Div. of Harsco Corp. v. U.S.*, 44 Fed. Cl. 141, 150 (1999); *U.S. v. Entin*, 750 F. Supp. 512, 519-20 (S.D. Fla. 1990); *U.S. v. Pani*, 717 F. Supp. 1013, 1017, 1019 (S.D.N.Y. 1989). This Court has recognized that the increase from double to treble damages rendered invalid this Court's prior suggestion in *Bornstein* that the Act was compensatory, and has declared the treble damage provision of the Act to thus be punitive rather than compensatory in nature. *See Vermont Agency of Natural Resources v. U.S.*, 529 U.S. at 785-86. The trebling

2. Prior to the 1986 amendment, the Act provided for double, rather than treble damages. *See* 31 U.S.C. § 3729(a).

of damages in the original amount in spite of a settlement between the government and the claimant, provides further evidence of the Act's punitive nature.

Moreover, the Court's concern in *Bornstein* that a guilty defendant could avoid liability simply by tendering an amount prior to trial is not applicable to *Dunleavy*. In the case of Delaware County, the United States conducted an audit and determined the amount it believed was owed by the County. After further communication, the United States and the County determined the amount which they respectively agreed would make the government whole, and the government accepted that payment in full satisfaction of its audit findings. The concern raised in *Bornstein* ignored the fact that a settlement would not be effective unless the government exercised its discretion to accept payment from the defendant in resolution of the issue. Unlike the defendant in *Bornstein*, the County was not receiving the benefit of a payment made by a third party. Allowing the relator to proceed for treble damages when the Government already has accepted and received what it considers itself to be due, only highlights and exacerbates the punitive nature of the Act.

II. THE FALSE CLAIMS ACT IS PUNITIVE IN NATURE BECAUSE THE UNITED STATES HAS ALTERNATIVE MEANS TO DETECT AND RECOUP LOSSES.

The Act does not provide the exclusive, or even a necessary, means for the federal government to recoup losses incurred because of allegedly fraudulent claims by municipal entities. There has been no showing that fraud by local governmental entities is rampant or that alternative means of discovering such alleged fraud are insufficient or ineffective. Indeed, although the Act was passed in 1863, there were no reported decisions attempting to impose liability on local governmental entities until the decision in *United States ex rel. Graber v. City of New York*, 8 F. Supp.

2d 343 (S.D.N.Y. 1998). Although *Dunleavy* and other cases were filed in the mid-1990's, the County is not aware of any False Claims Act cases being filed against local governmental agencies substantially before that time. Moreover, the number of cases alleging local governmental false claims is miniscule compared with the overall number of False Claims Act cases filed and in light of the billions of dollars disbursed by the federal government to thousands of municipalities and other local governments annually.

As the Court has stated, the Act "was enacted in 1863 with the principal goal of stopping the massive frauds perpetrated by large [private] contractors during the Civil War." *Stevens*, 529 U.S. at 781, *citing*, *United States v. Bornstein*, 423 U.S. at 309. However, when addressing the ability of the federal government to detect fraud in grant programs by local governments, it is important to note that in addition to the other investigative tools available to the federal government for all grantees, local governments are also subject to an additional layer of scrutiny that does not apply in the governmental contractor context. All state governments, local governments and non-profit organizations ("Non-federal Entities") that receive $300,000 in awards from the federal government in a fiscal year are also subject to the Audit Act. *See generally* 31 U.S.C. §§ 7501-7507. Pursuant to the Audit Act, each such entity must undergo either a single audit, as set forth in the Audit Act, or a program specific audit, each fiscal year. 31 U.S.C. § 7502(a)(1)(A).[3] Auditors are required to report the results of audits made pursuant to the Audit Act, and any federal agency which provides an award to a Non-federal Entity is required to review that entity's audit. 31 U.S.C. § 7502(f)(1)(B), (g)(1). The reports generated by the auditors are submitted to a clearinghouse and made available to the

3. Non-federal entities that receive awards under multiple programs must undergo a single audit. 31 U.S.C. § 7502(a)(1)(B). Non-federal entities that receive awards under a single program may elect either a program-specific audit or a single audit.

public. 31 U.S.C. § 7502(h). The Director of the Office of Management and Budget and the clearinghouse are also responsible for reviewing audits submitted by Non-federal Entities that receive awards from multiple federal agencies. *See* 31 U.S.C. § 7504(b).

In those instances where there may be fraudulent or false claims, common law remedies are available to the federal government to recover usurped amounts. The most obvious action would be for breach of contract resulting from the grantee's failure to abide by the terms of the grant agreement. Actions for fraud or unjust enrichment, among others, also would be available to the federal government, depending upon the specific facts, or other contract (such as the Annual Contributions Contract between HUD and each public housing authority) governing the receipt, use of and reporting for federal grants.

In addition to the common law remedies, there is an entire regulatory scheme that has been established to govern the policing of federal grants to grantees. The Inspector General Act of 1978, 5 U.S.C. App. 3 §§ 1-12 (2002) (the "IGA") and the regulations of the various executive departments and agencies, each provide sufficient means for the discovery and recovery of funds fraudulently usurped from the government. The discrepancy between the amount recoverable via the Act and that recoverable via the IGA and the various administrative audit provisions further evidences the punitive intent of the Act.

In enacting the IGA, Congress stated that among the purposes of the Offices of Inspector General is prevention and detection of fraud and abuse in the programs and operations of the various executive agencies. *See* 5 U.S.C. App. 3 § 2(2) (2002). The Inspectors General are to conduct audits and reviews to prevent fraud in federal programs. *See* 5 U.S.C. App. 3 § 2(1) (2002). To the extent any program regulations are insufficient for the discovery and prevention of fraud, the Inspectors General have a duty to inform the heads of their respective agencies and Congress, and to

make recommendations for corrections. *See* 5 U.S.C. App. 3 §§ 2(3), 4(a)(5) (2002). The legislative history of the IGA recognizes the effective role Inspectors General and similar auditors have played in uncovering grantee problems and makes it clear that Congress desired that the position created thereunder be charged with discovery and recovery of grantee fraud:

> In testimony supporting H.R. 8588 and an appropriate balance between audit and investigative responsibilities, the General Accounting Office endorsed each of the auditing provisions proposed by the committee, and recommended that the title of Inspector General be amplified to reflect the importance of the audit function. The Comptroller General testified that 'the name of the organizations established by the bill will set the tone for how they operate,' and suggested a title such as inspector and auditor general. The GAO also stated its finding that 'internal auditors nearly always pay their own way many times over by performing audit work that leads to: recovery of overpayments from grantees and contractors, adoption of more efficient and economical ways of conducting agency operations, and tightening of controls over cash and other assets to make fraud and abuse more difficult.' The irony of inadequate attention to proper auditing by many program officials is underscored by GAO's estimate that audit-related savings run into many billions even though agencies do not always take full advantage of internal auditors' work.

Act of October 12, 1978, Pub. L. No. 95-452, 1978 U.S.C.C.A.N. (92 Stat. 1101) 2676, 2685-86.

Agencies that are susceptible to False Claims also have promulgated audit and reporting regulations that provide sufficient means to discover and prevent fraud in their respective programs. As stated above, in the *Dunleavy* matter HUD actually exercised its audit prerogative, and as a result was able to obtain a $1,921,699 settlement with the

County. Among the provisions available to HUD to audit and recover funds dispersed under the Community Block Development Grant program are 24 C.F.R. § 85.42 (requiring grant recipients to provide access to records to the Comptroller General and HUD representatives), §§ 570.900-.906 (requiring HUD to conduct reviews of grantee performance on an annual or more frequent basis) and §§ 570.910-.913 (governing the sanctions available to HUD to remedy grantee non-compliance).

A survey of some of the cases filed against local governments under the False Claims Act shows that for each program under which false claims were allegedly made, federal regulations similarly provide adequate provisions for the detection and recovery of fraudulently usurped funds, which regulatory audits and investigations would have been available to the government had it chosen to utilize these methods in those cases.

In the matter *sub judice*, Relator attempts to state a cause of action under the Act for fraud in connection with a grant from the National Institute of Drug Abuse ("NIDA"). *See U.S. ex rel Chandler v. Hektoen Institute for Med. Res.*, 35 F. Supp. 2d 1078, 1079-80 (N.D. Ill. 1999) ("Chandler 1"). Part 92 of Title 45 of the C.F.R. sets forth uniform administrative requirements for HHS grants to local governments. *See* 45 C.F.R. § 92.1.

Cook County and Cook County Memorial Hospital, the latter of which was the recipient of the NIDA grant, are local governments as defined under Part 92. *See* 45 C.F.R. § 92.3. *See also Chandler 1* at 1086 (stating that Cook County Hospital does not have a separate legal existence from Cook County). The regulations in Sections 92.40 through 92.44 set forth a series of reporting requirements imposed upon local government grantees, including but not limited to, annual (and, in some instances, quarterly) performance reports and periodic financial statements, whose frequency is to be determined by HHS depending on the program. *See, e.g.*, 45 C.F.R. § 92.40, § 92.41. Section 92.42 requires

grantees to retain records and provide access to same to HHS and the Comptroller General. *See* 45 C.F.R. § 92.42. Finally, section 92.43 sets forth remedies to the federal government if a grantee fails to comply with any term of an award. *See* 45 C.F.R. § 92.43. Those remedies include withholding payment to a grantee, disallowing credit for the cost of a non-complying activity, terminating the grantee's award, withholding further awards, suspension and debarment from participation in federal programs, and any other remedies available at law. *Id.*

U.S. v. Hickman County arose from the federal government's allegation that Hickman County received disaster funds under the 42 U.S.C. § 5121, et seq. (the "Stafford Act"), to repair flood damaged bridges from the Federal Emergency Management Agency, but did not spend the funds on any of the bridges for which relief was sought. *U.S. v. Hickman County*, no. 1:97-0086 at 3 (M.D. Tenn. March 29, 2001). Hickman County was declared a disaster area by President Clinton. *Id.*

Pursuant to 44 C.F.R. § 206.16(a)[4], the Associate Director or Regional Director of FEMA:

> shall conduct audits and investigations as necessary to assure compliance with the Stafford Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

Under section 206.16(b), auditors may also access books and records of any person relating to any activity undertaken or funded pursuant to the Stafford Act. 44 C.F.R. § 206.16(b). Section 206.14 provides for a fine for misuse of Stafford Act funds equal to one and one-half times the misapplied amount, plus a civil penalty of up to $5,000 for each violation of the Stafford Act. *See* 44 C.F.R. § 206.14( ) and

4. Title 44, Part 206, subpart A of the Code of Federal Regulations governs grants made pursuant to a declaration by the President of a major disaster or emergency. *See* 44 C.F.R. § 206.1.

(d). That section also preserves the federal government's right to initiate a civil action for violations of the Stafford Act. *See* 44 C.F.R. § 206.14(b).

In *U.S. ex rel. Kinney v. Hennepin County Med. Cent.*, 2001 WL 930780 (D. Minn. Jan. 22, 2001) the relator alleged that the medical center submitted false statements seeking reimbursement related to ambulance transportation from Medicare and Medicaid. *Id.* at *1. Similarly, in *U.S. ex rel. King v. Jackson County Hospital Corporation*, 2001 U.S. Dist. Lexis 21706, the relator alleged that defendants submitted or conspired to submit false Medicare and Medicaid claims, submitted duplicate claims and altered claim documents. *Id.* at 4.

Title 42 of the C.F.R. sets forth several provisions for the detection of such alleged violations of the Medicare and Medicaid programs. *See* 42 C.F.R. § 1004.30 (requiring that Peer Review Organizations report violators to the HHS Office of Inspector General). *See* also 42 C.F.R. § 447.202 (requiring state Medicaid agencies to assure appropriate audits of provider records for payments based on costs of services or fee plus cost of materials bases). Additionally, Parts 1003 and 402 provide for civil money penalties, assessments and exclusions from federal programs for violations of the Medicaid and Medicare provisions of the Social Security Act. *See* 42 C.F.R. §§ 402.1, et seq., 1003.100, et seq.

In *U.S. ex rel. Graber v. City of New York*, 8 F. Supp. 2d 343 (S.D.N.Y. 1998), relator alleged that the City submitted false statements to obtain federal incentive funding and reimbursement for foster care expenditures. *Id.* at 344. As set forth above, Part 92 of Title 45 of the C.F.R. sets forth uniform administrative requirements for HHS grants to local governments. *See* 45 C.F.R. § 92.1. Foster care reimbursement is made through grants, in this case grants to the City. *See* 42 U.S.C. § 670, et seq. Therefore, the same requirements and remedies described in the above discussion of the matter *sub judice* are applicable in the New York City matter as well.

In *U.S. ex rel. Honeywell v. San Francisco Housing Authority*, 2001 WL 793300 (N.D. Cal. July 12, 2001), arose out of a contract dispute between Honeywell, Inc. ("Honeywell") and the San Francisco Housing Authority ("SFHA"). *Id.* at *1. SFHA received funds from HUD for utility consumption. *Id.* To encourage energy conservation, SFHA and other public housing authorities ("PHAs") were permitted to freeze their consumption funding for a period of time. *Id.* Under HUD regulations, PHAs were permitted to retain fifty percent (50%) of the savings achieved through energy saving improvements, and were required to remit the remainder to the contractor making the improvements. *Id.*

PHA grantees are subject to both energy and financial audits. Energy audits must be completed at least once every five years, and must list all conservation measures and indicate the payback period for such measures. 24 C.F.R. § 965.302. 24 C.F.R. § 85.26. Grantees are required to retain records for a period of at least three years for the purpose of audits and litigation. 24 C.F.R. § 85.42. The regulations set forth remedies for failure to comply with the terms of an award, statute or regulation which include: withhold of cash payments pending remedy of a violation; disallowance of a non-complying activity; suspension or termination from the program; withholding of future awards from the program; debarment or suspension; or any other remedy available at law. 24 C.F.R. § 85.43.

As each of the above cases illustrates, administrative regulations provide federal agencies with the ability to audit grantees and recover any improperly usurped funds. However, none of the remedies set forth in such regulations are as drastic as the treble damage provisions of the Act. Because the administrative agencies have deemed the regulatory provisions to be sufficient means to recoup losses of program funds, more drastic False Claim remedies extend

beyond mere compensation and are punitive. While punitive sanctions against private entities may be permissible, the longstanding precedents of this Court prohibit such sanctions against local governmental entities absent the express intent of Congress to the contrary. *See City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 262-263 (1981).

CONCLUSION

The treble damage provision of the Act, coupled with the availability to federal entities of less harsh remedies, provide clear evidence of the Act's punitive intent. Relators are permitted to proceed with *qui tam* actions in spite of settlement of the underlying dispute between the federal government and the defendant. The punitive effect of the Act is emphasized by the fact that damages under the Act are trebled before any credit for such a settlement is calculated.

Moreover, subjecting local government entities to False Claims Act liability, in addition to contravening the common law immunity against punitive damages, is not necessary to enable the United States to discover and rectify false claims by local governmental agencies. Rather, there are well developed statutory, regulatory and common law remedies available to insure that the government has the means to protect the federal treasury from any alleged false claims by local governmental entities.

Respectfully submitted,

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